

U.S. District Court
Northern District of Ohio (Cleveland)
CIVIL DOCKET FOR CASE #: 1:05-cv-02924-KMO
Internal Use Only

Erico International Corporation v. Vutec Corporation et al
Assigned to: Judge Kathleen M. O'Malley
Case in other court: Federal Circuit, 07-01168
Cause: 35:271 Patent Infringement

Date Filed: 12/19/2005
Date Terminated: 01/14/2009
Jury Demand: Both
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

Erico International Corporation

Pat. # 5,740,494

represented by **Jay R. Campbell**
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with a marketing brochure showing pictures of some of the products listed in the Doc's Marketing price sheet. A copy of the Doc's Marketing brochure is attached as Exhibit C. Upon information and belief, Doc's Marketing manufactures, distributes, uses, sells and/or offers for sale J-Hooks, as illustrated in the attached Exhibits B and C.

10. ERICO has also recently learned that Wiremaid is marketing infringing knock-off J-Hook products. A copy of a Wiremaid marketing brochure is attached as Exhibit D. Upon information and belief, the Doc's Marketing brochure (Exhibit C) and the Wiremaid marketing brochure (Exhibit D) include identical pictures of a J-Hook supporting a run of cable. Both brochures also describe using the J-Hook to support communication cable. Wiremaid's brochure also states that its J-Hooks may be spaced at intervals to limit cable sag to "12 inches maximum" or about 30 centimeters. Wiremaid continues to promote and offer for sale its infringing J-Hook products via its web site. Copies of selected pages printed from Wiremaid's web site on December 19, 2005 are attached as Exhibit E. Upon information and belief, Wiremaid manufactures, distributes, uses, sells and/or offers for sale J-Hooks, as illustrated in the attached Exhibits D and E.

11. Upon information and belief Doc's Marketing and/or Wiremaid import knock-off J-Hook products from a John Doe Company, an unknown manufacturing and importing company, located in the People's Republic of China.

JURISDICTION AND VENUE

12. This action arises under the Patent Laws of the United States, Title 35, United States Code. This Court has jurisdiction under 28 U.S.C. § 1338(a).

13. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (d) and 1400(b).

COUNT I: INDUCING INFRINGEMENT OF THE '994 PATENT

14. ERICO incorporates by reference herein the allegations of Paragraphs 1-13 of this Complaint.

15. ERICO is the owner by assignment of United States Patent No. 5,740,994 entitled CABLE SUPPORT AND METHOD. The '994 Patent was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on April 21, 1998 and subject to a reexamination certificate, issued on September 23, 2003. The '994 Patent is still in force and effect and is presumed valid under the U.S. patent laws.

16. Defendants have been and still are indirectly infringing the '994 Patent under 35 U.S.C. § 271(b) by actively inducing direct infringement by other persons who use products that embody one or more of the claims of the '994 Patent when Defendants had knowledge of the '994 Patent, knew or should have known that its actions would induce direct infringement by others and intended that its actions would induce direct infringement by others. Defendants will continue to induce infringement unless enjoined by this court.

17. ERICO has provided DOC's Marketing with written notice of its infringement.

18. Defendants have knowingly and willfully infringed the '994 Patent.

19. As a result of Defendants' infringement, ERICO has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm in the future unless Defendants' infringing activities are enjoined by this Court.

20. ERICO will be greatly and irreparably harmed unless preliminary and permanent injunctions are issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, and all others acting on its behalf from infringing the '994 Patent.

COUNT II: CONTRIBUTORY INFRINGEMENT OF THE '994 PATENT

21. ERICO incorporates by reference herein the allegations of Paragraphs 1-20 of this Complaint.

22. Defendants have been and still is indirectly infringing the '994 Patent under 35 U.S.C. § 271(c) by contributory infringement by providing non-staple articles of commerce to others for use in an infringing system with knowledge of the '994 Patent and knowledge that these non-staple articles of commerce are used as a material part of the claimed inventions of the '994 Patent. Defendants will continue to infringe unless enjoined by this court.

23. ERICO has provided DOC's Marketing with written notice of its infringement.

24. Defendants have knowingly and willfully infringed the '994 Patent.

25. As a result of Defendants' infringement, ERICO has suffered monetary damages in an amount not yet determined, and will continue to suffer irreparable harm in the future unless Defendants' infringing activities are enjoined by this Court.

26. Unless preliminary and permanent injunctions are issued enjoining Defendants and their agents, servants, employees, attorneys, representatives, and all others acting on its behalf from infringing the '994 Patent, ERICO will be greatly and irreparably harmed.

PRAYER FOR RELIEF

Plaintiff ERICO prays for the following relief:

- (a) A judgment that Defendants have directly infringed and/or indirectly infringed by contributory infringement and/or inducement, and continue to infringe the '994 Patent;
- (b) A judgment that Defendants' infringement of the '994 Patent has been willful;
- (c) A judgment against Defendants awarding ERICO damages suffered pursuant to 35 U.S.C. § 284 on account of Defendants' infringement of the '994 Patent;
- (d) A judgment that ERICO's damages be trebled pursuant to 35 U.S.C. § 284 and that punitive damages be assessed against Defendants;
- (e) A temporary restraining order and preliminary injunction against Defendants and any entity acting in concert with Defendants, pursuant to 35 U.S.C. § 283, preventing Defendants and any such entity, from infringing the '994 Patent;
- (f) A permanent injunction against Defendants and any entity acting in concert with Defendants, pursuant to 35 U.S.C. § 283, preventing Defendants and any such entity, from infringing the '994 Patent;
- (g) A judgment that this is an exceptional case and that ERICO be awarded reasonable attorney fees pursuant to 35 U.S.C. § 285; and
- (h) A judgment that Defendants be directed to pay ERICO its costs incurred herein and such other and further relief as the Court deems just and equitable.

Dated: 12/19/05

Respectfully submitted,

T.R.T.

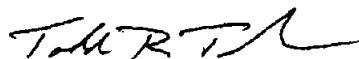
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Attorneys for ERICO International Corporation

JURY DEMAND

Plaintiff ERICO respectfully requests a trial by jury as to all issues so triable.

Respectfully submitted,



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Attorneys for ERICO International Corporation

**IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ERICO INTERNATIONAL CORPORATION) Civil Action No. 1:05CV2924
)
Plaintiff,) JUDGE O'MALLEY
)
v.)
DOC'S MARKETING, INC., et al.)
)
Defendants.)
)

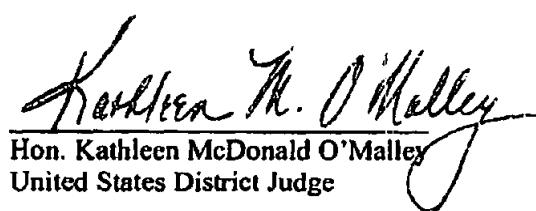
STIPULATED DISMISSAL

Plaintiff ERICO International Corporation ("ERICO") and Defendant Doc's Marketing, Inc. ("Doc's"), have entered into an agreement to settle this action and hereby stipulate to a dismissal of this action as follows:

1. All claims in this action brought by ERICO and Doc's antitrust claim are dismissed with prejudice,
2. All other claims/defenses brought by Doc's are dismissed with prejudice with Doc's having the right to reassert of any of these claims and defenses if ERICO sues Doc's again for infringement of the '994 Patent, and
3. Each Party to bear its own costs and attorneys' fees.

IT IS SO ORDERED.

ENTERED: 1/14/09


Hon. Kathleen McDonald O'Malley
United States District Judge

Defendant

Vutec Corporation

TERMINATED: 02/09/2006

represented by **John T. Wiedemann**

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Defendant

Wiremaid Products

a Division of

TERMINATED: 02/09/2006

other

Vutec Corporation

TERMINATED: 02/09/2006

represented by **John T. Wiedemann**

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Defendant

Doc's Marketing Corporation

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Defendant

John Doe Company

Mediator

Michael J. Garvin

Mediator

TERMINATED: 11/30/2006

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Counter-Claimant

Doc's Marketing Corporation

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Douglas W. Sprinkle
(See above for address)
ATTORNEY TO BE NOTICED

Mark D. Schneider
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter-Defendant

Erico International Corporation

represented by **Mark C. Johnson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jay R. Campbell
(See above for address)
ATTORNEY TO BE NOTICED

Todd R. Tucker
(See above for address)
ATTORNEY TO BE NOTICED

Counter-Claimant

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V.

Counter-Defendant

Erico International Corporation

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(See above for address)
ATTORNEY TO BE NOTICED

Todd R. Tucker
(See above for address)
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Date Filed	#	Docket Text

12/19/2005	<u>1</u>	Complaint with jury demand against John Doe Company, Vutec Corporation, Wiremaid Products, & Doc's Marketing Corporation (3 summons and Magistrate Consent Forms issued). Filed by Erico International Corporation. Filing fee paid; receipt number 675066. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u> Exhibit E# <u>6</u> Civil Cover Sheet)(M, P) (Entered: 12/20/2005)
12/19/2005	<u>2</u>	Random Assignment of Magistrate Judge Baughman (M, P) (Entered: 12/20/2005)
12/19/2005	<u>3</u>	Corporate Disclosure Statement filed by Erico International Corporation. Related document(s) <u>1</u> . (M, P) (Entered: 12/20/2005)
12/20/2005	<u>4</u>	Motion for temporary restraining order <i>/preliminary injunction</i> filed by Erico International Corporation. (Tucker, Todd) (Entered: 12/20/2005)
12/20/2005	<u>5</u>	Memorandum In Support of Motion for temporary restraining order <i>/preliminary injunction</i> filed by Erico International Corporation. Related document(s) <u>4</u> . (Attachments: # <u>1</u> Exhibit A - Declaration of Edward J. Lynch, Jr.# <u>2</u> Exhibit B - Declaration of Scott Laughlin# <u>3</u> Exhibit C - Declaration of Todd R. Tucker# <u>4</u> Exhibit 1 to Exhibit C Declaration of Todd R. Tucker# <u>5</u> Exhibit 2 to Exhibit C Declaration of Todd R. Tucker# <u>6</u> Exhibit 3 to Exhibit C Declaration of Todd R. Tucker# <u>7</u> Exhibit 4 to Exhibit C Declaration of Todd R. Tucker# <u>8</u> Exhibit 5 to Exhibit C Declaration of Todd R. Tucker# <u>9</u> Exhibit 6 to Exhibit C Declaration of Todd R. Tucker# <u>10</u> Exhibit 7 to Exhibit C Declaration of Todd R. Tucker# <u>11</u> Exhibit 8 to Exhibit C Declaration of Todd R. Tucker# <u>12</u> Exhibit 9 to Exhibit C Declaration of Todd R. Tucker)(Tucker, Todd) (Entered: 12/20/2005)
12/28/2005	<u>6</u>	Return of Service Executed upon Doc's Marketing thru Jane Dockery by personal service on 12/22/05 filed by Erico International Corporation (C, K A) (Entered: 12/29/2005)
01/05/2006	<u>7</u>	Response to Motion for temporary restraining order <i>/preliminary injunction</i> filed by Doc's Marketing Corporation. Related document(s) <u>4</u> . (Attachments: # <u>1</u> Exhibit List# <u>2</u> Exhibit A-Doc's Ad# <u>3</u> Exhibit B-U.S. Patent No. 5,740,994# <u>4</u> Exhibit C-BPAI Decision# <u>5</u> Exhibit D-Erico RMX# <u>6</u> Exhibit E-Obo Bettermann Publication# <u>7</u> Exhibit F-EIA/TIA-569 Standard# <u>8</u> Exhibit G-FIBS Pub 175# <u>9</u> Exhibit H-BICSI Building Code# <u>10</u> Exhibit I-Military Handbook excerpt# <u>11</u> Exhibit J-Declaration of Forrest Dockery)(Schneider, Mark) (Entered: 01/05/2006)
01/09/2006	<u>8</u>	Notice of Hearing. Telephone Conference set for 1/13/2006 01:00 PM before Honorable Kathleen M. O'Malley. Plaintiff's counsel shall initiate conference and call the Court. (H, C) (Entered: 01/09/2006)
01/11/2006		Financial Transaction in the amount of \$380.00 received for motion to appear pro hac vice by attorneys Douglas W. Sprinkle & Mark D. Schneider, Receipt # 675583 (M, P) (Entered: 01/11/2006)
01/11/2006	<u>9</u>	Joint Motion for extension of time until February 10, 2006 to answer <i>Complaint</i> filed by Erico International Corporation, Vutec Corporation, Wiremaid Products. (Johnson, Mark) (Entered: 01/11/2006)

01/11/2006	<u>10</u>	Motion for appearance pro hac vice of Mark D. Schneider and Douglas W. Sprinkle filed by Doc's Marketing Corporation. Filing fee paid; receipt number 675583. (Attachments: # <u>1</u> Affidavit Mark D. Schneider# <u>2</u> Affidavit of Douglas W. Sprinkle)(E, P) (Entered: 01/11/2006)
01/11/2006	<u>11</u>	Notice of failure to file electronically, pursuant to Local Rule 5.1(c). Non-compliant document: <u>10</u> Motion for appearance pro hac vice of filed by Doc's Marketing Corporation . (E, P) (Entered: 01/11/2006)
01/11/2006	<u>12</u>	Answer to Complaint with Jury Demand <i>Affirmative Defenses and</i> (Related Doc # <u>1</u>), Counterclaim against Erico International Corporation filed by Doc's Marketing Corporation. (Schneider, Mark) Modified text of docket entry on 1/12/2006 (B, B). (Entered: 01/11/2006)
01/13/2006	<u>14</u>	Minute Order of Telephone Conference held on 1/13/06; Motion of plaintiff for Temporary Restraining Order denied; Preliminary Injunction Evidentiary Hearing set for 3/9/2006 at 09:30 AM in Courtroom 16A before Honorable Kathleen M. O'Malley.. Signed by Judge Kathleen M. O'Malley on 1/13/06. (S, DJ) (Entered: 01/18/2006)
01/17/2006	<u>13</u>	Motion for appearance pro hac vice of <i>Ernest I. Gifford</i> filed by Doc's Marketing Corporation. (Attachments: # <u>1</u> Affidavit of Ernest I. Gifford) (Schneider, Mark) Modified text of docket entry on 1/18/2006 (B, B). (Entered: 01/17/2006)
01/17/2006		Financial Transaction in the amount of \$190.00 received for motion to appear pro hac vice by attorney Ernest I. Gifford, Receipt # 675681 Related document(s) <u>13</u> . (C, BA) (Entered: 01/17/2006)
01/18/2006		(Court only) Utility Event Terminating Motions Related document Motion for Temporary Restraining Order denied (see document 14) on the record <u>4</u> . (S, DJ) (Entered: 01/18/2006)
01/25/2006		Order (non-document) granting motion for appearance pro hac vice of attorneys Douglas W. Sprinkle and Mark D. Schneider on behalf of Doc's Marketing Corporation. (Related Doc # <u>10</u>). Entered by Judge Kathleen M. O'Malley on 1/25/06.(S, R) Modified text of docket entry on 1/26/2006 (B, B). (Entered: 01/25/2006)
01/26/2006		Order (non-document) granting defendant Doc's Marketing, Inc.'s motion for appearance pro hac vice for Ernest I. Gifford. (Related Doc # <u>13</u>). Entered on behalf of Judge Kathleen M. O'Malley on 1/26/06.(S, R) (Entered: 01/26/2006)
01/27/2006	<u>15</u>	Answer to <i>Counterclaim by Doc's Marketing</i> filed by Erico International Corporation. Related document(s) <u>12</u> . (Johnson, Mark) Modified text of docket entry on 1/30/2006 (B, B). (Entered: 01/27/2006)

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U.S. DISTRICT COURT
CLERK'S OFFICE

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ERICO INTERNATIONAL CORPORATION
34600 Solon Road
Solon, Ohio 44139

Plaintiff,

v.

VUTEC CORPORATION
2741 N.E. 4th Avenue
Pompano Beach, Florida 33064

WIREMAID PRODUCTS, a division of Vutec
Corporation
5900 Stirling Road
Pompano Beach, Florida 33064

DOC'S MARKETING CORPORATION
5158 Goldman Avenue, Suite A
Moorpark, California 93021, and

JOHN DOE COMPANY
People's Republic of China

Defendants.

JUDGE O'MALLEY
1:05cv2924

Civil Action No.

COMPLAINT

(JURY DEMAND)

For its Complaint against Vutec Corporation ("Vutec"), Wiremaid Products, a division of Vutec, Doc's Marketing Corporation ("Doc's Marketing") and John Doe Company ("John Doe") (collectively, "Defendants"). Plaintiff ERICO International Corporation ("ERICO") states as follows:

THE PARTIES

1. Plaintiff ERICO is a corporation organized and existing under the laws of the State of Ohio and having a place of business at 34600 Solon Road, Solon, Ohio 44139.
2. Vutec Corporation is a corporation organized and existing under the laws of the State of Florida, having its headquarters and principal place of business at 2741 N.E. 4th Avenue, Pompano Beach, Florida 33064. Wiremaid Products is a division of Vutec Corporation (collectively "Wiremaid"), having a place of business at 5900 Stirling Road, Hollywood, Florida 33021 and doing business in this state and judicial district by offering its products for sale.
3. Doc's Marketing Corporation is a corporation located in the State of California, having its headquarters and principal place of business at 5158 Goldman Avenue, Suite A, Moorpark, California 93021 and doing business in this state and judicial district by offering its products for sale.
4. John Doe Company is a yet to be identified foreign company that, on information and belief, is located and doing business in the People's Republic of China and doing business in this state and judicial district by importing its products and offering its products for sale.

FACTUAL BACKGROUND

5. ERICO is the leading manufacturer and developer of a variety of fasteners for use in the installation of electrical and communications cable, utilities and other infrastructures in buildings. The fasteners ERICO manufactures and sells include cable supports known as J-Hooks.

6. ERICO has established a preeminent place in the market by protecting its intellectual property, requiring a rigorous quality assurance program and employing unmatched customer service. In addition, ERICO products are carefully load-rated, subjected to exacting treatment and corrosion resistance standards, and carefully designed and manufactured to meet both code requirements and regulations as well as specific application requirements.

7. ERICO has also developed a strong intellectual property portfolio including United States patent 5,740,994 ("the '994 Patent") protecting its inventive J-Hook cable support. A copy of the '994 Patent is attached as Exhibit A.

8. ERICO first learned of the infringement by Doc's Marketing during the summer of 2005 when it saw an advertisement announcing the introduction of Doc's Marketing's infringing J-Hook. ERICO immediately contacted Doc's Marketing and notified it of the '994 Patent and warned Doc's Marketing that any sale of the knock-off J-Hook would be an infringement of the '994 Patent.

9. ERICO recently learned that Doc's Marketing had contacted one of its nationwide distributors and attempted to convince it to replace ERICO's patented J-Hooks with Doc's Marketing's J-Hooks. Doc's Marketing provided ERICO's distributor with a price sheet for knock-off J-Hook products of varying sizes from Doc's Marketing. A copy of the Doc's Marketing price sheet is attached as Exhibit B. Doc's Marketing also provided the distributor